

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

2008 AUG 25 AM 10:39

UNITED STATES OF AMERICA) CR 407-223
) 407-312
 v.)
)
 GEORGE MICHAEL MLAY)

ORDER OF DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, and by leave of Court endorsed hereon, the United States Attorney for the Southern District of Georgia hereby dismisses, without prejudice, the defendant George Michael Mlay from the indictments herein, said dismissal being in the interests of justice.

Pursuant to a written plea agreement, defendant had been scheduled to enter a plea of guilty to count two of CR 407-223 and to count one of CR 407-312 on November 13, 2007. At the time set for the Rule 11 hearing, counsel for the defendant announced that defendant had been preliminarily diagnosed with brain cancer on November 11, 2007 and moved the court to continue the matter until such time as defendant's medical condition was better ascertained. Defendant filed a written motion to continue on November 26, 2007, requesting that the Court continue his case until such time as he and his counsel were able to ascertain defendant's competence to enter a plea of guilty. The defendant agreed to waive his right to a speedy trial while undergoing medical treatment. The Court granted defendant's written motion on November 28, 2007.

By letter dated December 28, 2007, W. Scott Kellogg, M.D., a board certified oncologist, advised the Court that the Defendant was suffering from "metastatic, stage 4 lung cancer that has spread to the brain." According to Dr. Kellogg, Mlay has several lesions in his brain and a lesion in his chest and the diagnosis is "ultimately fatal and incurable." Mlay continues to receive treatment

for his illness. Based on a review of medical reports provided by the defendant, the government is persuaded that Mlay is not competent to enter a plea of guilty nor to stand trial for the charges herein. This situation is unlikely to change in the foreseeable future. Given the confirmed gravity of Defendant's medical condition, the ends of justice are served by the dismissal of charges without prejudice.

Respectfully submitted,

s/ Edmund A. Booth, Jr.

Edmund A. Booth, Jr.
United States Attorney

s/ James D. Durham

James D. Durham
Assistant United States Attorney
Georgia Bar No. 235515

s/ Karl I. Knoche

Karl I. Knoche
Assistant United States Attorney
Georgia Bar No. 426624

Leave of court is granted for the filing of the foregoing dismissal of George Michael Mlay, without prejudice, from Indictment Nos. CR 407-223 and 407-312.

So ORDERED, this 25 day of August 2008.



HON. B. AVANT EDENFIELD
JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ORDER OF DISMISSAL
George Michel Mlay
CR 407-223/ 407-312
Prepared by AUSA Knoche